



United States Department of the Interior
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
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WEST VALLEY CITY, UTAH 84119

In Reply Refer To

FWS/R6
ES/UT
03-0574

May 13, 2003

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Rick Black
HDR Engineering, Inc.
3995 South 700 East, Suite 100
Salt Lake City, Utah 84107-2594

RE: Construction and Operation of Rail Line Between Levan and Salina, Utah
Finance docket No. 34075

Dear Rick:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of April 1, 2003 announcing your intent to prepare an Environmental Review on the Levan to Salina Rail Project (project). The purpose of the project is to construct, operate, and maintain a 43 mile long rail line for the purpose of transporting coal and to alleviate the truck traffic currently used for transport. We are providing the following comments for your consideration in your Environmental Review.

Consistent with NEPA regulation 40 CFR § 1503.1(a)(1) that the action agency shall obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved, we are responding to your request for concerns and comments on this EA/EIS. In Section 1 of this letter we convey our concerns that should be addressed in the NEPA compliance document for this project. Section 2 of this letter addresses your responsibilities under section 7 of the Endangered Species Act (ESA) of 1973, 16 U.S.C. § 1536.

Section 1.

Of the routes described in your letter and associated materials, the Service believes the preferred route chosen would have the least adverse impacts to fish and wildlife resources. The northern corridor (CW) route avoids most wetlands and other sensitive areas and has only two major stream crossings (Chicken Creek and Sevier River). Minimal disturbance to critical wintering habitat for mule deer will occur along the southern corridor (WW) and potential habitats of federally listed species will be largely avoided.

Bald eagles, Burrowing owls, ferruginous hawks, and Swainson's hawks have all been documented using the area surrounding the preferred southern alignment. We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck, January 2002) which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

Utah prairie dogs have used areas near the proposed south corridor. Utah prairie dogs are listed as "threatened" under the Endangered Species Act. We recommend that habitat for Utah prairie dogs be identified by survey and avoided.

Critical and high value wintering habitat for mule deer has been identified in the area of the preferred southern alignment. We suggest steps be taken to avoid these areas where practicable.

Bonneville cutthroat trout are found in Chicken Creek. Bonneville cutthroat trout are a "Conservation Species" and have a conservation agreement developed to meet management objectives. Also, Columbian spotted frogs are found in the vicinity and surveys should be conducted to verify the possible impacts that may occur to their populations and habitat. Conservation Agreement species are species that are managed under a Conservation Agreement and Strategy in an effort to improve their status. Conservation Agreements are voluntary cooperative plans among resource agencies. The Conservation Agreements identify threats to species in decline and provide for conservation measures to pro-actively conserve and protect these species. Signatory parties to the Conservation Agreements include Federal and Tribal agencies, typically with the State of Utah as the lead management agency. Successful implementation of Conservation Agreements is important for improving the status of species and reducing the need to list species under the Endangered Species Act. Projects that would cause degradation or loss of Conservation Agreement species or their habitat would go against the spirit and intent of these agreements. Guidelines in the conservation agreement should be followed where impacts may occur in Bonneville cutthroat trout habitat.

Least chub and leatherside chub are both found in tributaries to the Sevier River. Least chub are a conservation species and have a conservation agreement developed to meet management objectives. Guidelines in the conservation agreement should be followed where impacts may occur in least chub habitat. The leatherside chub is a species of special concern in Utah because of declining populations and restricted/specialized habitats occupied by these fish. Care should be taken to preserve suitable habitat and connectivity of the waterways where these fish occur.

Stream crossings should span the active floodplain. Stream crossing impacts to riparian areas should be minimized where possible and losses to riparian habitat should be mitigated. We also recommend the following best management practices be employed during construction to protect fish and wildlife:

1. If bank stabilization, erosion control, or other structures are necessary, they should be properly designed to maintain or enhance natural stream function (sinuosity, gradient, hydrology, and sediment transport).
2. Concrete, asphalt, steel or other human-made materials should not be used for bank stabilization or in the active stream channel. Boulders, root-wads and other natural materials found locally should be used to stabilize stream banks.
3. Equipment should be cleaned to remove noxious weeds/seeds and petroleum products prior to moving on site.
4. Fueling machinery should occur off site or in a confined, designated area to prevent spillage into waterways and wetlands. Oil booms should be on site and placed downstream of the project site prior to beginning work if equipment will be operating in the low flow channel.
5. Materials should not be stockpiled in the riparian area or other sensitive areas, i.e., wetlands.
6. Fill materials should be free of fines, waste, pollutants, and noxious weeds/seeds.
7. Equipment should work from the top of the bank or from the channel to minimize disturbance to the riparian area and to protect the banks. Heavy equipment should avoid crossing and/or disturbing wetlands.
8. Ingress and egress access should be kept to a minimum.
9. Excavated soils should be sorted into mineral soils and top soils. When backfilling a disturbed site top soils should be placed on top to provide a seed bed for native plants.
10. Disturbed areas should be monitored for noxious and undesirable plant species and control actions should be implemented if necessary.
11. Disturbed areas (work site(s), ingress, egress, stockpile site(s), pit) should be revegetated when appropriate after construction with native plants or certified weed-free native seed. The planting should be monitored for success. If the planting fails it should be reseeded/planted.

Section 2.

Federal agencies have specific additional responsibilities under Section 7 of the ESA. To help you fulfill these responsibilities, we are providing an updated list of threatened (T) and endangered (E) species that may occur within the area of influence of your proposed action.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Heliotrope Milkvetch ⁴	<i>Astragalus montii</i>	T
Last Chance Townsendia	<i>Townsendia aprica</i>	T
Wright Fishhook Cactus	<i>Sclerocactus wrightiae</i>	E
Bald Eagle ³	<i>Haliaeetus leucocephalus</i>	T
Southwestern Willow Flycatcher	<i>Empidonax trailii extimus</i>	E
Western Yellow-billed Cuckoo	<i>Coccyzus americanus occidentalis</i>	C
Utah Prairie Dog	<i>Cynomys parvidens</i>	T

T = threatened
E = endangered
C = candidate

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12).

Candidate species have no legal protection under the Endangered Species Act (ESA). Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.


Only a Federal agency can enter into formal Endangered Species Act (ESA) section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Please note that the peregrine falcon which occurs in all counties of Utah was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the Migratory Bird Treaty Act (16 U.S.C. § 703-712) which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. When taking of migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors, their nests, or eggs, Migratory Bird Permits must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

Thank you for the opportunity to provide comments on this project. If we can be of further assistance or if you have any questions, please feel free to contact Chris Witt of our office at (801) 975-3330 extension 133.

Sincerely

A handwritten signature in black ink, appearing to read "H. R. Maddux", with a stylized flourish at the end.

✓ Henry R. Maddux
Utah Field Supervisor

cc: UDWR - SLC